

Senate File 431 - Reprinted

SENATE FILE 431
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1138)

(As Amended and Passed by the Senate March 23, 2017)

A BILL FOR

1 An Act relating to the siting of small wireless facilities.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 8C.2, subsections 3 and 14, Code 2017,
2 are amended to read as follows:

3 3. "Authority", used as a noun, means a state, county,
4 or city governing body, board, agency, office, or commission
5 authorized by law to make legislative, quasi-judicial,
6 or administrative decisions relative to an application.

7 "Authority" does not include state any of the following:

8 a. State courts having jurisdiction over land use, planning,
9 or zoning decisions made by an authority,~~the.~~

10 b. The utilities division of the department of commerce,~~or.~~

11 c. Any entities, including municipally owned utilities
12 established under or governed by Title IX, subtitle 4 of
13 the Code, that do not have zoning or permitting authority
14 jurisdiction.

15 14. "Utility pole" means a pole or similar structure owned
16 or operated utilized in whole or in part by a public utility,
17 municipality, wireless service provider, or electric utility
18 that is designed specifically for and used to carry lines,
19 cable, transmission equipment, or wires for telephone, wireless
20 service, cable television, or electricity service, or ~~to~~
21 provide for lighting, traffic control, signage, information
22 kiosks, or other similar functions.

23 Sec. 2. Section 8C.2, Code 2017, is amended by adding the
24 following new subsections:

25 NEW SUBSECTION. 10A. a. "Small wireless facility" means a
26 wireless facility that meets the following requirements:

27 (1) Each antenna is no more than six cubic feet in volume.

28 (2) (a) All other equipment associated with the small
29 wireless facility is cumulatively no more than twenty-eight
30 cubic feet in volume.

31 (b) For purposes of this subparagraph, volume shall be
32 measured by the external displacement of the primary equipment
33 enclosure, not the internal volume of such enclosure. An
34 associated electric meter, concealment, telecommunications
35 demarcation box, ground-based enclosures, battery backup power

1 systems, grounding equipment, power transfer switch, cutoff
2 switch, cable, conduit, and any equipment that is concealed
3 from public view within or behind an existing structure or
4 concealment may be located outside of the primary equipment
5 enclosure and shall not be included in the calculation of the
6 equipment volume.

7 *b.* "Small wireless facility" does not include any structure
8 that supports or houses equipment described in this subsection.

9 NEW SUBSECTION. 14A. "Wireless facility" means equipment
10 at a fixed location that enables the transmission of wireless
11 communications or information of any kind between user
12 equipment and a communications network.

13 NEW SUBSECTION. 14B. "Wireless service" means any fixed or
14 mobile service using licensed or unlicensed wireless spectrum
15 and provided using a wireless facility.

16 NEW SUBSECTION. 14C. "Wireless service provider" means a
17 provider of wireless service.

18 Sec. 3. NEW SECTION. 8C.7A Uniform rules for small wireless
19 facilities — permit approval.

20 1. *a.* Except as provided in this section, an authority
21 shall not prohibit or restrict the siting of a small wireless
22 facility.

23 *b.* For purposes of this section, "siting" means the
24 mounting, installation, maintenance, modification, operation,
25 or replacement of a small wireless facility on or adjacent to
26 any of the following:

27 (1) An existing tower, utility pole, wireless support
28 structure, or other existing structure.

29 (2) A new utility pole of a similar height and appearance
30 as an existing utility pole and which is located within a
31 five-hundred-foot radius of the existing utility pole.

32 (3) A replacement utility pole of a similar height and
33 appearance as an existing utility pole and which is located
34 within a five-hundred-foot radius of the existing utility pole.

35 2. *a.* An authority that has adopted planning and zoning

1 regulations shall authorize the siting of a small wireless
2 facility within its jurisdiction and shall not require a person
3 to obtain a special or conditional land use permit for any of
4 the following:

5 (1) For siting the small wireless facility in a public
6 right-of-way or on an authority structure located outside of
7 a public right-of-way to the extent that such structure is
8 already in use as a wireless support structure by supporting
9 non-authority communications equipment that involve external
10 attachments, provided that such structure is not listed on the
11 national register of historic places.

12 (2) For siting the small wireless facility on an existing
13 tower, utility pole, or wireless support structure, regardless
14 of the location, except for on property zoned and used
15 exclusively for single-family residential use or within a
16 previously designated area of historical significance pursuant
17 to section 303.34.

18 *b.* A small wireless facility may be classified as a special
19 or conditional land use where such small wireless facility is
20 not sited in a manner as provided in paragraph "a".

21 *c.* A person may install a new utility pole or wireless
22 support structure in a public right-of-way subject to the
23 provisions of this section. However, an authority may require
24 a person to obtain a special or conditional land use permit to
25 install a new utility pole or wireless support structure for
26 the siting of a small wireless facility on property zoned and
27 used exclusively for single-family residential use or within a
28 previously designated area of historical significance pursuant
29 to section 303.34.

30 3. *a.* An authority may require a person to obtain a
31 building, electrical, or public right-of-way use permit for the
32 siting of a small wireless facility to the extent that such
33 permit is of general applicability and does not deny access
34 to site the small wireless facility in a public right-of-way.
35 Notwithstanding this paragraph, an authority shall not require

1 a person to obtain a permit for the routine maintenance of a
2 previously approved small wireless facility or the replacement
3 of a previously approved small wireless facility with a
4 facility of substantially similar height, weight, and wind
5 and structural loading, provided, however, that an authority
6 may require a person to obtain a permit to work in a public
7 right-of-way or on an authority structure located outside
8 of a public right-of-way with the same terms and conditions
9 provided for other commercial projects or uses in the public
10 right-of-way or on the authority structure.

11 *b.* An authority shall not require a person to apply for
12 or enter into an individual license, franchise, or other
13 agreement with the authority or any other entity for the siting
14 of a small wireless facility on a utility pole located in a
15 public right-of-way. However, an authority may, through the
16 conditions set forth in a building permit obtained pursuant to
17 this subsection, do any of the following:

18 (1) Establish nondiscriminatory, competitively neutral and
19 commercially reasonable rates, terms, and conditions for such
20 siting, which rates, terms, and conditions shall comply with
21 the federal pole attachment requirements provided in 47 U.S.C.
22 §224 and any regulations promulgated thereunder.

23 (2) Require compliance with the Iowa electrical safety
24 code.

25 (3) Require that a small wireless facility reasonably match
26 the aesthetics of an existing utility pole or wireless support
27 structure that incorporates decorative elements.

28 (4) Require compliance with section 306.46, subsection 1,
29 and section 306.47.

30 *c.* Beginning with applications filed on or after September
31 1, 2017, an authority shall accept an application for, process,
32 and issue a permit under this subsection as follows:

33 (1) An applicant shall not be required to provide more
34 information or pay a higher application fee, consulting fee,
35 or other fee associated with the processing or issuance of a

1 permit than the amount charged to a telecommunications service
2 provider that is not a wireless service provider. The total
3 amount of fees for processing or issuing a permit, including
4 any fees charged by third parties, shall not exceed five
5 hundred dollars for an application addressing no more than five
6 small wireless facilities, and an additional fifty dollars
7 for each small wireless facility addressed in an application
8 in excess of five small wireless facilities. An applicant
9 shall not be required to pay any additional fees or perform any
10 services relating to the acceptance, processing, or issuance
11 of a permit, nor provide any services unrelated to the siting
12 of the small wireless facility or of a new, replacement, or
13 modified utility pole on which a small wireless facility is
14 sited. For purposes of this subparagraph, engineering and
15 structural review are deemed to be related to the permitting
16 of a small wireless facility. The total amount of fees shall
17 be adjusted every five years to reflect any increases or
18 decreases in the consumer price index, rounded to the nearest
19 five dollars.

20 (2) An authority shall approve or deny a permit application
21 within sixty days following the submission of a completed
22 application. Except as provided herein, an application shall
23 be deemed approved if the authority fails to approve or deny
24 the application within sixty days following the submission of a
25 completed application. This period of time for the processing
26 of an application may be extended upon mutual written agreement
27 between the authority and the applicant. An applicant may
28 address up to twenty-five small wireless facilities in a single
29 application, provided, however, that a single application may
30 only address small wireless facilities within a single two-mile
31 radius. In rendering a decision on an application addressing
32 more than one small wireless facility, an authority may
33 approve the application as to certain individual small wireless
34 facilities while denying it as to others. An authority's
35 denial of an individual small wireless facility or subset of

1 small wireless facilities within an application is not a basis
2 to deny the application as a whole. If an authority receives
3 applications for the approval of more than seventy-five small
4 wireless facilities within a single seven-day period, whether
5 from a single applicant or from multiple applicants, the
6 authority may, upon request, obtain an automatic thirty-day
7 extension for any additional siting application submitted
8 during that seven-day period.

9 (3) (a) An authority may only deny a completed application
10 if any of the following apply:

11 (i) The application fails to include reasonable information
12 required by the authority and in accordance with this
13 subsection.

14 (ii) The application does not meet applicable building
15 or electrical codes or standards, provided such codes and
16 standards are of general applicability.

17 (iii) The application would result in the authority being
18 noncompliant with the federal Americans With Disabilities Act.

19 (iv) A licensed engineer certifies that siting the small
20 wireless facility would compromise the structural safety of, or
21 preclude the essential purpose of, the utility pole or wireless
22 support structure on which it is proposed to be sited and the
23 applicant refuses to reimburse the authority for the costs of
24 modifying or replacing the utility pole or wireless support
25 structure with a utility pole or wireless support structure
26 that would safely support the small wireless facility and
27 preserve the essential purpose of the utility pole or wireless
28 support structure.

29 (v) The application seeks approval of a new utility pole
30 or wireless support structure that would preclude the safe
31 and effective use of facilities already located in a public
32 right-of-way.

33 (vi) The application seeks approval for the siting of a
34 small wireless facility on a wireless support structure used
35 exclusively for emergency communications equipment.

1 (b) An authority denying an application shall document the
2 basis for the denial, including the specific code provisions
3 or standards on which the denial is based, and provide the
4 applicant with such documentation on or before the date the
5 application is denied.

6 (c) An applicant whose application is denied shall have
7 an opportunity to cure any deficiencies identified by the
8 authority as the basis for the denial and to submit a revised
9 application within thirty days following the date of denial
10 without paying an additional fee. The authority shall approve
11 or deny a revised application within thirty days following
12 submission. The authority shall not identify any deficiencies
13 in a second or subsequent denial that were not identified in
14 the original denial.

15 (4) An authority shall not limit the duration of a permit
16 issued under this subsection, provided, however, that the
17 construction of a small wireless facility permitted pursuant
18 to this subsection shall commence no later than two years
19 following the date that the permit is issued, or two years
20 after any appeals are exhausted.

21 (5) An authority shall not impose a moratorium on the
22 processing or issuance of permits under this subsection.

23 (6) An authority shall process and issue permits on a
24 nondiscriminatory basis. An authority shall receive an
25 application for, process, and issue a permit for the siting of
26 a small wireless facility in a manner substantially comparable
27 to the permitting of other applicants within the jurisdiction
28 of the authority, and may not impose discriminatory licensing
29 standards for persons siting small wireless facilities.

30 4. The annual recurring rate charged by an authority
31 for the siting of a small wireless facility on an authority
32 utility pole shall not exceed the rate computed by the
33 federal communications commission for telecommunications pole
34 attachments in 47 C.F.R. §1.1409(e)(2).

35 5. a. An authority shall authorize the siting of a small

1 wireless facility on an authority structure located outside
2 of a public right-of-way to the same extent the authority
3 authorizes access to such structures for other non-authority
4 communications equipment that involve external attachments,
5 and may authorize the siting even if the authority has not
6 previously permitted such access.

7 *b.* A siting authorized under this subsection shall be
8 subject to reasonable rates, terms, and conditions as provided
9 in one or more agreements between the authority and the
10 wireless service provider. Notwithstanding chapter 480A,
11 the annual recurring rate for such siting as charged by an
12 authority shall not exceed the least of any of the following:

13 (1) The amount charged for a similar commercial project or
14 use to occupy a similar area of space on similarly situated
15 property.

16 (2) The projected cost to the authority resulting from the
17 siting.

18 (3) One hundred dollars, adjusted every five years to
19 reflect any increases or decreases in the consumer price index,
20 rounded to the nearest five dollars.

21 6. A party aggrieved by the final action of an authority,
22 either by its affirmative action on a permit, term or
23 condition, or rate under the provisions of this section or by
24 its inaction, may bring an action for review in any court of
25 competent jurisdiction, except that if the final action of the
26 authority was the denial of a conditional or special use permit
27 pursuant to this section, the party must first seek review
28 under section 335.13 or 414.10, as applicable.

29 7. This section only addresses an authority's approval of
30 zoning and building permits and the rates for the use of public
31 rights-of way and authority structures. This section shall not
32 modify the rights and obligations of a nonauthority owner of a
33 utility pole or a municipal utility that owns a utility pole,
34 under 47 C.F.R. §1.1401 et seq., and the Iowa electrical safety
35 code.

1 Sec. 4. NEW SECTION. **8C.7B Small wireless facilities —**
2 **violation and removal.**

3 1. A public utility that owns or controls a utility pole on
4 which a small wireless facility is sited in alleged violation
5 of this chapter or the Iowa electrical safety code shall
6 notify the owner of the small wireless facility of the alleged
7 violation, in writing or by any other method agreed upon by the
8 parties in writing. The notice shall include the following
9 information:

10 *a.* The address and location where the alleged violation
11 occurred.

12 *b.* A description of the alleged violation.

13 *c.* Suggested corrective action.

14 2. Upon the receipt of notice of an alleged violation, the
15 recipient of such notice shall respond to the public utility
16 within sixty days in writing or by any other method agreed upon
17 by the parties in writing. The response shall include the
18 following information:

19 *a.* A statement disclosing whether or not the recipient
20 of the notice is the owner of the small wireless facility at
21 issue.

22 *b.* A statement disclosing that the owner disputes that the
23 alleged violation has occurred, if applicable.

24 *c.* A plan for corrective action if the owner does not
25 dispute that the violation has occurred.

26 *d.* A statement disclosing whether the violation has been
27 corrected, if the owner does not dispute that the violation has
28 occurred.

29 3. The owner of a small wireless facility in alleged
30 violation of this chapter or the Iowa electrical safety
31 code shall correct the alleged violation within one hundred
32 eighty days after receiving notice of the violation unless,
33 for good cause shown, a delay for taking corrective action
34 is appropriate or if the parties otherwise agree in writing
35 to extend the time required to take corrective action. Good

1 cause for a delay in corrective action shall include but is
2 not limited to a dispute over whether the recipient of the
3 notice is the owner of the small wireless facility at issue, a
4 dispute over whether the alleged violation has occurred, or if
5 taking corrective action within the required time frame is not
6 possible due to circumstances which are beyond the control of
7 the owner of the small wireless facility. The public utility
8 and owner of the small wireless facility shall cooperate in
9 determining an efficient and cost-effective solution to correct
10 an alleged violation.

11 4. a. Notwithstanding subsections 1 through 3, in the event
12 of an emergency, an authority or public utility shall contact
13 the owner of the small wireless facility at issue and provide
14 the owner with a reasonable opportunity to alleviate such
15 emergency or participate with the authority or public utility
16 to make any repairs necessary to alleviate such emergency. If
17 the owner of the small wireless facility does not respond in a
18 timely manner, the authority or public utility may remove or
19 make alterations to the small wireless facility as necessary
20 to ensure public safety.

21 b. For purposes of this subsection, "emergency" means
22 exigent and extraordinary circumstances under which the
23 physical or electrical failure of a utility pole, wireless
24 support structure, or small wireless facility threatens
25 imminent physical harm to persons or there is a substantial
26 likelihood of imminent and significant harm to property.

27 5. If the parties cannot resolve a dispute after following
28 the procedures provided in this section, any party may file an
29 action concerning an alleged violation under this section in
30 the district court for the county in which the violation is
31 alleged to have occurred, for any appropriate remedy, including
32 the removal of a small wireless facility deemed by the court to
33 be in violation of this chapter or the Iowa electrical safety
34 code. However, this section shall not preclude a party from
35 bringing an action pursuant to the Iowa electrical safety code

1 or 47 C.F.R. §1.1401 et seq., or the application of a dispute
2 resolution process set forth in an applicable pole attachment
3 agreement between the parties.

4 6. Nothing in this section shall be deemed to limit the
5 ability of a public utility and the owner of a small wireless
6 facility to voluntarily enter into a pole attachment agreement
7 that establishes different terms for the siting of a small
8 wireless facility or the resolution of a dispute regarding such
9 a facility.

10 Sec. 5. NEW SECTION. **8C.7C Height limitations.**

11 1. A new, replacement, or modified utility pole or wireless
12 support structure installed in a public right-of-way located
13 within the city limits of an incorporated city for the purpose
14 of siting a wireless facility, including a small wireless
15 facility under the provisions of this chapter shall not exceed
16 the greater of ten feet in height above the tallest utility
17 pole existing on or before July 1, 2017, located within five
18 hundred feet of the new, replacement, or modified utility pole
19 in the same public right-of-way, or forty feet in height above
20 ground level. Except as provided in section 8C.7A, subsection
21 2, paragraph "c", an authority shall not require a special or
22 conditional use permit for the installation of a utility pole
23 or wireless support structure that complies with the height
24 limitations of this subsection.

25 2. Notwithstanding subsection 1, a person may construct,
26 modify, or maintain a utility pole or wireless support
27 structure along, across, and under a public right-of-way
28 in excess of the size limits provided in subsection 1, to
29 the extent permitted by the authority's applicable zoning
30 regulations.

31 3. A person shall comply with nondiscriminatory
32 undergrounding requirements that prohibit wireless service
33 providers from installing structures in a public right-of-way
34 without prior zoning approval in areas zoned and used for
35 single-family residential use, provided that such requirements

1 shall not prohibit the replacement of existing structures.

2 4. Nothing in this section shall be deemed to limit the
3 ability of a public utility to install a utility pole for the
4 purposes of electric utility transmission or distribution
5 within a public right-of-way subject to an authority's planning
6 and zoning regulations.

7 Sec. 6. Section 8C.9, Code 2017, is amended to read as
8 follows:

9 **8C.9 Repeal.**

10 This chapter is repealed July 1, ~~2020~~ 2022.